

TODD S. WELCH

IBLA 81-440

Decided August 26, 1982

Appeal from decision of Wyoming State Office, Bureau of Land Management, rejecting noncompetitive over-the-counter oil and gas lease offer. W-73967.

Affirmed as modified.

1. Oil and Gas Leases: Generally--Oil and Gas Leases: Applications:  
Generally--Oil and Gas Leases: Lands Subject to

It is proper for the Bureau of Land Management to reject an over-the-counter offer for an oil and gas lease of land formerly included in a lease which expired by operation of law, because under 43 CFR 3112.1-1 such land is subject to leasing only under the simultaneous filing system, 43 CFR Subpart 3112.

APPEARANCES: Todd S. Welch, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Todd S. Welch has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated February 10, 1981, rejecting his noncompetitive over-the-counter oil and gas lease offer, W-73967, because the land was subject to leasing only under the simultaneous filing system, 43 CFR Subpart 3112.

On January 27, 1981, appellant filed oil and gas lease offer W-73967 for "Tract 38, which is located in the NW 1/4 NW 1/4 of section 20, Township 51 North, Range 96 West of the 6th Principal Meridian, Original Survey, County of Big Horn, State of Wyoming, containing approximately 40 acres." In its February 1981 decision, BLM stated that "[t]ract 38" is in sec. 17, rather than sec. 20 of T. 51 N., R. 96 W., sixth principal meridian, Wyoming, and that it was leased under W-64931, which expired July 21, 1980. BLM concluded that as the land had previously been included in an expired lease, it was not available for leasing pursuant to an over-the-counter lease offer.

BLM also noted that the NW 1/4 NW 1/4 sec. 20 1/ was included in tracts 139 and 140 and lot 5, that the United States does not own the minerals in tracts 139 and 140 and that lot 5 is leased under W-64944.

In his statement of reasons for appeal, appellant contends that the land is available for leasing pursuant to an over-the-counter lease offer because the previous lease, W-64931, was "void ab initio." Appellant bases this conclusion on the alleged fact that lease W-64931 erroneously described the leased land as tract 38, sec. 17. Appellant states that, despite the fact that BLM records indicate that tract 38 is located in sec. 17, it is "impossible for tract 38 to be located in section 17." Appellant submits a copy of a plat taken from the Assessor's Office, Big Horn County, Wyoming (Exh. C), which indicates that tract 39 is located north of tract 38. Appellant also submits a copy of a patent from the United States to William Kennison (No. 240486), dated March 26, 1908, which covers, in part, the SW 1/4 SW 1/4 sec. 17, T. 51 N., R. 96 W., sixth principal meridian, Wyoming, and a copy of the "Index to Segregated Tracts," filed with the Surveyor General's Office on December 7, 1910, which indicates that the land patented to William Kennison, including the SW 1/4 SW 1/4 sec. 17, was designated "Resurvey No. 39." Appellant concludes that this latter evidence indicates that "tract 39 is the SW 1/4 SW 1/4 of section 17," and, as tract 39 is located north of tract 38 on the assessor's plat, tract 38 must be situated in the NW 1/4 NW 1/4 sec. 20.

The record reveals that appellant is mistaken in his conclusion that lease W-64931 erroneously described the leased land. In the first place there is no tract 38 in either sec. 17 or sec. 20. Tract 38 is located in sec. 36. The various tracts were numbered at the time of the resurvey of T. 51 N., R. 96 W., sixth principal meridian which was approved on December 7, 1910. In a resurvey, tract designations are used to segregate out alienated lands which cannot conform to the resurvey. Where a fractional part of a section still within Federal ownership is invaded by a tract segregation that part within Federal ownership is lotted. The number 38 on the plat of resurvey in sec. 17 is clearly a lot number rather than a tract number, since the land embraced within lot 38 was in Federal ownership in 1910 and is still today part of the public domain. Thus, the State Office decision is in error to the extent it held that tract 38 was situated in sec. 17. Tract 38 is in neither sec. 17 nor sec. 20; it is in sec. 36. This being the case, appellant's offer could be rejected simply on the ground that it misdescribes the land sought. See, e.g., Bob G. Howell, 63 IBLA 156 (1982); B. D. Price, 34 IBLA 41 (1978). However, as we shall show, the record clearly establishes that lot 38 is in sec. 17 and, thus, even had appellant's offer properly identified the land sought as lot 38 rather than tract 38, the offer was properly rejected.

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1/ BLM incorrectly referred to the SW 1/4 SW 1/4 sec. 20 in its February 1981 decision. This appears to be a typographical error. The supplemental status plat for secs. 17 through 20, T. 51 N., R. 96 W., sixth principal meridian, Wyoming, dated Feb. 4, 1981, which is included in the case file, indicates that the NW 1/4 NW 1/4 sec. 20 is included within tracts 139 and 140 and lot 5. The SW 1/4 SW 1/4 sec. 20 is included within lot 36.

The record includes not only a supplemental status plat, dated February 4, 1981, but the supplemental plat of the resurvey of the NW 1/4 T. 51 N., R. 96 W., sixth principal meridian, Wyoming, filed with the Surveyor General's Office on December 7, 1910. Both plats indicate that lot 38, containing 37.68 acres, is situated in the SW 1/4 SW 1/4 sec. 17. Moreover, the relationship of the various lots and tracts in sec. 17 is identical to the configuration on the assessor's plat, submitted by appellant. By comparing the Surveyor General's plat with the assessor's plat, it is evident that appellant erroneously assumed that the top row of quarter sections was part of sec. 17, rather than sec. 8, and that the bottom row, including lot 38, was included within sec. 20, rather than sec. 17. It is easy to discern how this error occurred. The 1910 resurvey plat indicates that tract 39, acquired by William Kennison, includes the NW 1/4 SW 1/4 sec. 17, rather than the SW 1/4 SW 1/4 sec. 17. Under the resurvey, the patented land was determined to be approximately a quarter section to the north of where it was originally thought to be. <sup>2/</sup> It is clear that land within lot 38 is located in the SW 1/4 SW 1/4 sec. 17 and has never been patented.

The record includes a copy of a serial register page indicating that lot 38, sec. 17 was part of oil and gas lease W-64931, which expired on July 21, 1980. It is well established that BLM must reject an over-the-counter offer for an oil and gas lease of land formerly included in a lease which expired by operation of law, since under 43 CFR 3112.1-1, such land is subject to leasing only under the simultaneous filing system, 43 CFR Subpart 3112. Martha M. Findeiss, 50 IBLA 359 (1980). Thus, even if we construed appellant's lease offer as covering lot 38, sec. 17, we conclude that BLM properly rejected the offer.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified herein.

James L. Burski  
Administrative Judge

We concur:

Anne Poindexter Lewis  
Administrative Judge

Edward W. Stuebing  
Administrative Judge

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<sup>2/</sup> We note that tract 39 includes a sliver of land in the northern portion of the SW 1/4 SW 1/4 sec. 17.

